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COMPLAINT & CERTIFICATE OF SERVICE OF COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY AND UNITED STATES DEPARTMENT OF JUSTICE

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER
13 WATCH, a 501(c)(3) non-profit Public
14 Benefit Corporation,

15 Plaintiff,

16 v.

17 KINDER MORGAN ENERGY
18 PARTNERS, L.P., SFPP, L.P., and
19 DOES 1 -30, Inclusive,

20 Defendants

CASE NO. C12-00821 LB

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

DEPT. OF JUSTICE - ENPD
ENVIRONMENTAL DIVISION

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CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 100 E Street, Suite 210, Santa Rosa, CA 95404. On the date set forth below, I served the following described document(s):

COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION [Environmental - CLEAN WATER ACT, 33 U.S.C. § 1251 et seq.; RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6901 et seq.]

on the following parties by placing a true copy in a sealed envelope, addressed as follows:


Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on February 23, 2012 at Santa Rosa, California.


Wojciech P. Makowski

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
E-filing

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

CN12 0821

9 NORTHERN CALIFORNIA RIVER
WATCH, a 501(c)(3) non-profit Public
10 Benefit Corporation,

CASE NO.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION
[Environmental - CLEAN WATER ACT,
33 U.S.C. § 1251, *et seq.*; RESOURCE
CONSERVATION & RECOVERY ACT,
42 U.S.C. § 6901, *et seq.*]**

11 Plaintiff,

12 v.

13 KINDER MORGAN ENERGY
PARTNERS, L.P., SFPP, L.P., and
DOES 1-30, Inclusive,

14 Defendants.
15 _____/

16
17 Plaintiff, NORTHERN CALIFORNIA RIVER WATCH ("RIVER WATCH") by and
18 through its attorneys, and for its complaint against defendants, KINDER MORGAN ENERGY
19 PARTNERS, L.P., SFPP, L.P., and DOES 1-10, inclusive ("DEFENDANTS"), states as follows:

20 **I. NATURE OF CASE**

21 1. This is a civil suit brought against DEFENDANTS under the citizen suit enforcement
22 provisions of the Federal Water Pollution Control Act, also known as the Clean Water Act
23 ("CWA"), 33 U.S.C. § 1251 *et seq.*, and specifically Section 505, 33 U.S.C. §§ 1311, 1342 and
24 1365, to stop DEFENDANTS from repeated and ongoing violations of the CWA. These past
25 and currently ongoing violations are detailed in the Notice of Violations and Intent to File Suit
26 Under the Clean Water Act ("CWA NOTICE") dated March 14, 2011 made part of the pleadings
27 of this case and attached hereto as EXHIBIT A.
28

1 2. RIVER WATCH alleges that in the course of DEFENDANTS' ownership, control and/or
2 operation of current and/or former pipeline operations, piping infrastructure and/or petroleum
3 storage tank areas at three (3) sites in Contra Costa County, California identified in the CWA
4 NOTICE as the Concord Station, the Richmond Station and Selby Pond ("the Facilities")
5 DEFENDANTS are routinely violating the CWA's prohibitions against discharging pollutants
6 from a point source to waters of the United States without a National Pollutant Discharge
7 Elimination System ("NPDES") permit in violation of CWA § 301(a), 33 U.S.C. §1311(a),
8 discharging storm water without a NPDES permit in violation of 33 U.S.C. § 1342(p), or are
9 routinely violating the terms of the NPDES permits which regulate storm water discharges.

10 3. RIVER WATCH alleges DEFENDANTS have violated "effluent standards or
11 limitations" by discharging pollutants from various point sources such a hazardous waste, solid
12 waste, tanks, piping, equipment and the like into waters of the United States, specifically San
13 Francisco Bay and Walnut Creek, a tributary of San Francisco Bay, without a NPDES permit or
14 in violation of the California General Storm Water Permit.

15 4. RIVER WATCH alleges DEFENDANTS have discharged or are unlawfully discharging
16 pollutants from the Facilities to waters of the United States which waters are habitat for
17 threatened or endangered species as that term is defined by the California and the United States
18 Environmental Protection Agency ("EPA").

19 5. Under 33 U.S.C. §1251(e), Congress declared its goals and policies with regard to public
20 participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

21 *Public participation in the development, revision, and enforcement of any*
22 *regulation, standard, effluent limitation, plan or program established by the*
23 *Administrator or any State under this chapter shall be provided for, encouraged,*
and assisted by the Administrator and the States.

24 6. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
25 the imposition of civil penalties, and other relief for DEFENDANTS' violations of the CWA as
26 alleged herein.

27 7. This civil suit is also brought against DEFENDANTS under the citizen suit enforcement
28 provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA"),
specifically Sections 7002 (a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and 7002 (a)(1)(B), 42 U.S.C.

1 § 6972(a)(1)(B), to stop DEFENDANTS from repeated and ongoing violations of the RCRA.
2 These past and currently ongoing violations are detailed in the Notice of Violations and Intent
3 to File Suit Under the Resource Conservation and Recovery Act ("RCRA NOTICE") dated
4 March 14, 2011 made part of the pleadings of this case and attached hereto as EXHIBIT B.

5 8. Specifically, RIVER WATCH seeks relief under the provisions of the RCRA for
6 DEFENDANTS' alleged discharge of a variety of petrochemicals from the Facilities to both
7 surface and ground waters both threatening as well as impairing beneficial uses of these waters
8 as that term is defined by the State Water Resources Control Board ("SWRCB") and in the
9 Basin Plan for the Regional Water Quality Board San Francisco Bay Region ("RWQCB").

10 9. RIVER WATCH alleges that DEFENDANTS' use and storage of petroleum products,
11 petrochemicals and other pollutants at the Facilities as described in detail in the RCRA NOTICE,
12 regularly violates standards, regulations, conditions, requirements or prohibitions effective
13 pursuant to the RCRA regarding the storage of hazardous materials and like pollutants. [42
14 U.S.C. § 6972(a)(1)(A)].

15 10. On the basis of DEFENDANTS' past activities at the Facilities, in addition to current and
16 ongoing conditions at the Facilities, RIVER WATCH alleges DEFENDANTS are routinely
17 violating the RCRA's prohibition against creating an imminent and substantial endangerment
18 to human health and the environment by their operations at the Facilities as identified in the
19 RCRA NOTICE, which have caused contamination of soil, groundwater and adjacent surface
20 waters. [42 U.S.C. § 6972(a)(1)(B)].

21 11. At the present time, pollutants at the Facilities leach into groundwater and surface waters
22 from current and/or former pipeline operations, piping infrastructure, petroleum storage tank
23 areas and storm water runoffs at the Facilities, absent adequate measures to initially prevent the
24 discharges, or to remove pollutants from soil, groundwater and surface waters once they have
25 been deposited.

26 12. RIVER WATCH alleges DEFENDANTS are routinely violating the RWQCB's Water
27 Control Plan, commonly referred to as the Basin Plan and provisions set forth therein with
28 respect to (1) pollution remediation, (2) EPA regulations codified in the Code of Federal

1 Regulations, (3) toxics standards promulgated by the California State Water Resource Control
2 Board, and (4) by failing to implement adequate and comprehensive Corrective Action Plans to
3 fully remediate the contamination at the Facilities.

4 13. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
5 the imposition of civil penalties, and other relief for DEFENDANTS' violations of the RCRA
6 as alleged herein.

7 II. PARTIES

8 14. Plaintiff NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public
9 benefit corporation duly organized under the laws of the State of California, with headquarters
10 and main offices located in the City of Sebastopol, California. RIVER WATCH is dedicated to
11 protect, enhance and help restore the surface and subsurface waters of Northern California. The
12 majority of RIVER WATCH's members live and work in Northern California.

13 15. RIVER WATCH's members live in close proximity to waters and watersheds affected
14 by DEFENDANTS' illegal discharges as alleged herein. Said members have interests in said
15 watersheds which are or may be adversely affected by DEFENDANTS' alleged CWA and
16 RCRA violations. Said members use the affected waters and affected watershed areas for
17 domestic water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks,
18 religious, and spiritual practices, and the like. Furthermore, the relief sought herein will redress
19 the injuries in fact, the likelihood of future injuries, and the interference with the interests of said
20 members.

21 16. RIVER WATCH is informed and believes and on said information and belief alleges that
22 defendant KINDER MORGAN ENERGY PARTNERS, L.P. is a Texas Limited Partnership
23 registered to conduct business in the State of California; at all times relevant to this Complaint
24 is and was engaged in the storage and the transportation of petroleum products through pipelines;
25 and, at all times relevant to this Complaint is and was the owner and/or operator of the Facilities
26 or pipelines traversing the Facilities.

27 17. RIVER WATCH is informed and believes and on said information and belief alleges that
28 defendant SFPP, L.P. is a Delaware Limited Partnership registered to conduct business in the

1 State of California; is an operating partnership of KINDER MORGAN ENERGY PARTNERS,
2 L.P.; at all times relevant to this Complaint is and was engaged in the storage and the
3 transportation of petroleum products through pipelines; and, at all times relevant to this
4 Complaint is and was the owner and/or operator of the Facilities or pipelines traversing the
5 Facilities.

6 18. RIVER WATCH is informed and believes and on said information and belief alleges that
7 Defendants DOES 1-10, Inclusive, respectively, are persons, partnerships, corporations and
8 entities, who are, or were, responsible for, or in some way contributed to, the violations which
9 are the subject of this Complaint, or are, or were, responsible for the maintenance, supervision,
10 management, operations, or insurance coverage of the Facilities. The names, identities,
11 capacities, and functions of DOES 1-10, Inclusive, are presently unknown to RIVER WATCH.
12 RIVER WATCH shall seek leave of court to amend this Complaint to insert the true names of
13 said DOES when the same have been ascertained.

14 III. JURISDICTIONAL ALLEGATIONS

15 19. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA,
16 33 U.S.C. § 1365(a)(1), which states in part,

17 "any citizen may commence a civil action on his own behalf against any person
18 . . . who is alleged to be in violation of (A) an effluent standard or limitation . .
19 . . or (B) an order issued by the Administrator or a State with respect to such a
20 standard or limitation."

21 For purposes of Section 505, "the term 'citizen' means a person or persons having an interest
22 which is or may be adversely affected."

23 20. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), RIVER
24 WATCH gave notice of the CWA violations alleged in this Complaint more than sixty (60) days
25 prior to commencement of this lawsuit, to: (a) DEFENDANTS; (b) the United States EPA,
26 Federal and Regional, and (c) the State of California Water Resources Control Board.

27 21. Pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), venue lies in this
28 District as the Facilities which are the source of the violations complained of in this action are
located within this District.

1 22. Pursuant to 505(c)(3) of the CWA, 33 USC § 1365(c)(3), a copy of this Complaint has
2 been served on the United States Attorney General and the Administrator of the Federal EPA.

3 23. Subject matter jurisdiction is conferred upon this Court by RCRA Section 7002(a)(1),
4 42 U.S.C. § 6972(a)(1), which states in part,

5 “...any person may commence a civil action on his own behalf (A) against any
6 person ... who is alleged to be in violation of any permit, standard, regulation,
7 condition, requirement, prohibition or order which has become effective
8 pursuant to this chapter, or (B) against any person ...who has contributed or who
is contributing to the past or present handling, storage, treatment, transportation
or disposal of any solid or hazardous waste which may present an imminent and
substantial endangerment to health or the environment.”

9 24. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods
10 from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit
11 from the waterways and associated natural resources into which it is alleged that DEFENDANTS
12 discharge pollutants, or by which DEFENDANTS’ operations adversely affect those members’
13 interests, in violation of RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and RCRA § 7002
14 (a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The health, economic, recreational, aesthetic and
15 environmental interests of RIVER WATCH and its members have been, are being, and will
16 continue to be adversely affected by DEFENDANTS’ alleged unlawful violations. RIVER
17 WATCH contends that there exists injuries in fact to its members, causation of these injuries by
18 DEFENDANTS’ complained of conduct, and the likelihood that the requested relief will redress
19 these injuries.

20 25. Pursuant to 7002 (2)(A) of the RCRA, 42 U.S.C. § 6972(2)(A), RIVER WATCH gave
21 notice of the RCRA violations alleged in this Complaint more than ninety (90) days prior to the
22 commencement of this lawsuit to: (a) DEFENDANTS, (b) the United States EPA, both Federal
23 and Regional, (c) the State of California Water Resources Control Board, and (d) the State of
24 California Integrated Waste Management Board.

25 26. The basis for assignment of this case to the Northern District of California, pursuant to
26 RCRA §§ 7002(a) & (b), 42 U.S.C. §§ 6972(a) & (b), is that the Facilities are located in this
27 District.

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IV. STATEMENT OF FACTS

RIVER WATCH incorporates by reference all the foregoing, including the CWA NOTICE and RCRA NOTICE attached to this Complaint as EXHIBITS A and B.

27. RIVER WATCH is informed and believes, and on said information alleges that DEFENDANTS own and/or operate and/or have legal responsibility for remediation of the Facilities due to the presence of a variety of toxic chemicals and constituents that have leaked or otherwise escaped from the Facilities in the course of DEFENDANTS' petroleum products storage, pipeline transportation and other operations thereon. DEFENDANTS have installed and maintained a system of conveyances to dispose of the hazardous materials generated and released from the Facilities. The Facilities have been identified by the RWQCB as point sources of toxic pollutants which currently are and continue to pose an imminent and substantial threat to human health and to the local environment, and have continued to be and pose such a threat over the past five (5) or more years.

28. DEFENDANTS have stored and currently store significant quantities of refined petroleum products, including gasoline, jet fuel, and diesel fuel, at the Facilities and rely upon pipelines and related appurtenances to facilitate the transportation of these petroleum products to industrial users within the State of California and throughout the United States. Pollution from unauthorized releases in the course of DEFENDANTS' various transportation and distribution of petroleum products, tank storage of petroleum products and other operations at the Facilities can be traced back to the 1980s. Subsequent investigations of the Facilities indicate the contamination was and is attributable to unauthorized releases of pollutants due to surface spills, pipeline ruptures, impoundment storage, storm water runoff, poor maintenance or operational practices, or ineffective remediation strategies on behalf of DEFENDANTS.

29. RIVER WATCH is informed and believes, and on said information and belief alleges that DEFENDANTS have contributed or are contributing to the past handling, or storage, or treatment, or transportation, or disposal of solid and/or hazardous waste which may present an imminent or substantial endangerment to human health or to the environment.

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1 30. RIVER WATCH is informed and believes, and on said information and belief alleges
2 that in the course of their petroleum storage and distribution operations at the Facilities located
3 at the Richmond Station in Richmond, California, DEFENDANTS have caused the unauthorized
4 releases of hydrocarbon contamination in at least two instances in 2002, which resulted in
5 extensive subsurface contamination at and around this Richmond site, including an infiltration
6 of hydrocarbon contamination into a storm drain on the property, and into Herman Slough, a
7 water of the United States. Some remediation work has occurred, however levels of
8 hydrocarbon contamination in soils and groundwater remain high, and in some areas, there are
9 levels of free petroleum product in groundwater beneath the property. The soils and groundwater
10 at this site remain unremediated, and continue to threaten human health and the environment due
11 to groundwater migration offsite from the contamination that continues to exist.

12 31. RIVER WATCH is informed and believes, and on said information and belief alleges that
13 in the course of their petroleum storage and distribution operations at the Facilities located at the
14 Concord Station in Concord, California, DEFENDANTS have caused the unauthorized releases
15 of hydrocarbon contamination between 1985 and 2003 due to ruptured pipelines and other
16 contaminant spills from storage tank overflows. The various unauthorized releases of in excess
17 of 100,000 gallons of petroleum products at the Concord site have resulted in the presence of
18 free product in soils and groundwater at this site throughout the contaminant plume. While
19 extensive investigation and remediation has been ongoing since the 1980s, the work conducted
20 at this site over the past 25 years has not eliminated or significantly reduced the persistently high
21 levels of hydrocarbon contamination and is not designed to accomplish that within a reasonable
22 number of years. Potential migration of contaminated groundwater from the Concord site
23 currently threatens to contaminate adjacent Walnut Creek, a tributary water of the United States.
24 The soils and groundwater at this site remain largely unremediated and continue to threaten
25 human health and the environment due to groundwater migration offsite from contamination
26 which continues to exist.

27 32. RIVER WATCH is informed and believes, and on said information and belief alleges that
28 in the course of their petroleum delivery operations at the Facilities located at Selby Pond in

1 Rodeo, California, DEFENDANTS have caused the unauthorized releases of hydrocarbon
2 contamination due the rupture of one of their pipelines. In February of 1996, a pipeline rupture
3 caused extensive quantities of MTBE and TPHg to be released into Selby Pond, an ephemeral
4 surface water having a direct connection via conduit to the San Francisco Bay. DEFENDANTS
5 provided some immediate remediation efforts, but no remediation has occurred since
6 approximately the year 2000, even though very high levels of MTBE and TPHg continue to exist
7 in the soils and groundwater of Selby Pond. The Pond is tidally influenced by waters of San
8 Francisco Bay, and migration of MTBE and TPHg into San Francisco Bay continues to be
9 threatened by the unremediated nature of this contaminant spill.

10 33. DEFENDANTS have used and/or stored petroleum products at the Facilities in a manner
11 which has allowed significant quantities of hazardous chemicals to be discharged to soil and
12 groundwater beneath the Facilities, beneath adjacent properties, and into surface waters of the
13 United States. These unauthorized discharges are ongoing at the time of the filing of this
14 Complaint.

15 34. RIVER WATCH is informed and believes, and on said information alleges that following
16 the discovery of contaminant releases at the Facilities, regulatory agencies including the
17 RWQCB ordered DEFENDANTS to investigate and remediate the contamination.
18 DEFENDANTS have conducted some site investigations and remedial work at the Facilities in
19 response to Agency directives; however, based upon current levels of contamination,
20 DEFENDANTS have been unsuccessful in abating the contamination. To date, the levels of
21 contaminants of concern remain high above the allowable background levels, the State of
22 California's Maximum Contaminant Levels for petroleum products and petroleum constituents
23 in surface and ground waters, and/or the State of California's Water Quality Objectives for said
24 constituents, creating an imminent and substantial endangerment to public health and the
25 environment.

26 35. CWA § 402, 33 U.S.C. § 1342, requires dischargers to obtain a NPDES permit to
27 discharge any pollutant into waters of the United States. CWA § 301(a), 33 U.S.C. § 1311(a),

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1 prohibits the discharge of any pollutant unless the discharge is in compliance with various
2 enumerated sections of the CWA, including CWA § 402, 33 U.S.C. § 1342.

3 36. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant unless in
4 compliance with various enumerated sections of the CWA, including CWA § 402, 33 U.S.C. §
5 1342. The CWA provides for injunctive relief pursuant to CWA §§ 309(a) and 505(d), 33 U.S.C.
6 §§ 1319(a) and 1365(d).

7 37. CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water
8 discharges under the NPDES permitting program. States with approved NPDES permit
9 programs are authorized by Section 402(p) to regulate storm water discharges through permits
10 issued to dischargers and/or through the issuance of a single, statewide general permit applicable
11 to all storm water dischargers. Pursuant to this section of the Act, the Administrator of the
12 United States EPA has authorized California's SWRCB to issue NPDES permits including
13 general NPDES permits in California. The SWRCB elected to issue a statewide general permit
14 for industrial dischargers, and issued a General Permit on or about November 19, 1991, modified
15 the General Permit on or about September 17, 1992 and reissued the General Permit on or about
16 April 17, 1997.

17 38. In order to discharge storm water lawfully in California, industrial dischargers must
18 comply with the terms of the General Permit or must have obtained and complied with an
19 individual NPDES permit. (33 U.S.C. § 1311(a)). The General Permit contains certain absolute
20 prohibitions. Discharge Prohibition A(1) of the General Permit prohibits the direct or indirect
21 discharge of materials other than storm water ("non-storm water discharges"), which are not
22 otherwise regulated by a NPDES permit, to waters of the United States. Discharge Prohibition
23 A(2) of the General Permit prohibits storm water discharges and authorized non-storm water
24 discharges that cause or threaten to cause pollution, contamination or nuisance. Receiving Water
25 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or ground
26 water which adversely impacts human health or the environment. Receiving Water Limitation
27 C(2) of the General Permit prohibits storm water discharges that cause or contribute to an

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1 exceedance of any applicable water quality standard contained in a statewide Water Quality
2 Control Plan, or the applicable RWQCB's Basin Plan.

3 39. In addition to absolute prohibitions, the General Permit contains a variety of substantive
4 and procedural requirements which industrial dischargers must meet. Facilities discharging, or
5 having the potential to discharge storm water associated with industrial activity that have not
6 obtained an individual NPDES permit, must apply for coverage under the General Permit by
7 filing a Notice of Intent. The General Permit requires existing dischargers to file an Notice of
8 Intent before March 30, 1992.

9 40. Pursuant to the General Permit, dischargers must also develop and implement a Storm
10 Water Pollution Prevention Plan ("SWPPP"), which must comply with the standards of Best
11 Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant
12 Control Technology ("BCT"). The General Permit requires that an initial SWPPP must be
13 developed and implemented before October 1, 1992. The SWPPP must, among other
14 requirements, identify and evaluate sources of pollutants associated with industrial activities that
15 may affect the quality of storm and non-storm water discharges from the facility and identify and
16 implement site-specific best management practices ("BMPs") to reduce or prevent pollutants
17 associated with industrial activities in storm water and authorized non-storm water discharges
18 (Section A(2)). The SWPPP's BMPs must implement BAT and BCT. (Section B(3)). The
19 SWPPP must include: a description of individuals and their responsibilities for developing and
20 implementing the SWPPP (Section A(3)); a site map showing the facility boundaries, storm
21 water drainage areas with flow pattern and nearby water bodies, the location of the storm water
22 collection, conveyance and discharge system, structural control measures, impervious areas,
23 areas of actual and potential pollutant contact, and areas of industrial activity (Section A (4));
24 a list of significant materials handled and stored at the site (Section A(5)); a description of
25 potential pollutant sources including industrial processes, material handling and storage areas,
26 dust and particulate generating activities, and a description of significant spills and leaks, a list
27 of all non-storm water discharges and their sources, and a description of locations where soil
28 erosion may occur (Section A(6)). The SWPPP must include an assessment of potential

1 pollutant sources at the facility and a description of the BMPs to be implemented at the facility
2 that will reduce or prevent pollutants in storm water discharges and authorized non-storm water
3 discharges, including structural BMPs where non-structured BMPs are not effective. (Section
4 A (7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where
5 necessary (Section A(9), (10)).

6 41. The General Permit requires dischargers to eliminate all non-storm water discharges to
7 storm water conveyance systems other than those specifically set forth in Special Condition
8 D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition
9 D(1)(b).

10 42. The General Permit requires discharges commencing activities prior to October 1, 1992
11 to develop and implement an adequate written monitoring and reporting program no later than
12 October 1, 1992. Existing facilities covered under the General Permit must implement all
13 necessary revisions to their monitoring programs no later than August 1, 1997.

14 43. RIVER WATCH is informed and believes, and on such information alleges the discharges
15 and releases of pollutants by DEFENDANTS as described in the CWA NOTICE, RCRA
16 NOTICE and this Complaint, are both knowing and intentional; that DEFENDANTS have used,
17 stored and transported petroleum products at and through the Facilities which are known to
18 contain a variety of toxic substances, and intend or intended that such products be sold to and
19 used by the public; that DEFENDANTS have known of the contamination at the Facilities at
20 least since the 1980s, and are aware that failing to remediate the pollution allows the
21 contamination to migrate through soil and groundwater at and adjacent to the Facilities and to
22 continually contaminate and re-contaminate water used by the public and by wildlife, including
23 numerous aquatic species.

24 44. The RWQCB has determined that the watershed areas and affected waterways identified
25 in the CWA NOTICE, RCRA NOTICE and this Complaint, are beneficially used for drinking
26 water, water contact recreation, non-contact water recreation, fresh water habitat, wildlife
27 habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial
28 service supply, navigation, and sport fishing.

1 45. Violations of the CWA and the RCRA as alleged in this Complaint are a major cause of
2 the continuing decline in water quality, and a continuing threat to existing and future drinking
3 water supplies and industrial use supplies in Northern California. With every discharge,
4 groundwater supplies are contaminated. These discharges can and must be controlled in order
5 for the groundwater supply to be returned as a safe source of water that is intended to be used
6 for a wide variety of purposes.

7 **V. STATUTORY AND REGULATORY BACKGROUND**

8 **A. Clean Water Act ("CWA")**

9 46. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants
10 from a "point source" into the navigable waters of the United States, unless such discharge is in
11 compliance with applicable effluent limitations as set by the EPA and the applicable State
12 agency. These limits are to be incorporated into a NPDES permit specifically designed for that
13 point source. Additional sets of regulations are set forth in the RWQCB's Basin Plan, the
14 California Toxics Plan, the Code of Federal Regulations, and other regulations promulgated by
15 the EPA and the SWRCB. CWA §301(a) prohibits discharges of pollutants or activities not
16 authorized by, or in violation of, an effluent standard or limitation, or an order issued by the EPA
17 or a State with respect to such a standard or limitation, including a NPDES permit issued
18 pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19 47. The affected waterways and watershed areas identified in the CWA NOTICE and this
20 Complaint are navigable waters of the United States within the meaning of Section 502(7) of the
21 CWA, 33 U.S.C. § 1362(7).

22 48. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) establishes a framework for regulating
23 storm water discharges under the NPDES program. States with approved NPDES permit
24 programs are authorized by Section 402(p) to regulate storm water discharges through permits
25 issued to dischargers and/or through the issuance of a single, statewide general permit applicable
26 to all storm water dischargers.

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1 49. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator of the U.S.
2 EPA has authorized California's SWRCB to issue NPDES permits including the General Permit
3 in California.

4 50. In order to discharge storm water lawfully in California, industrial dischargers must
5 comply with the terms of the General Permit or have obtained and complied with an individual
6 NPDES permit. 33 U.S.C. § 1311(a).

7 51. RIVER WATCH alleges DEFENDANTS have no NPDES permit for the discharge of
8 toxic chemical contamination from the Facilities into waters of the United States. The Facilities
9 are a point source under provisions of the CWA, therefore all unauthorized point source
10 discharges to waters of the United States without a NPDES permit are illegal.

11 52. CWA §§ 505(a)(1) and 505(f), 33 U.S.C. §§ 1365(a)(1) and 1362(f) provide for citizen
12 enforcement actions against any "person," including individuals, corporations or partnerships,
13 for violations of NPDES permit requirements and for unpermitted discharges of pollutants.
14 Pursuant to CWA §§ 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365, violators of the Act are
15 subject to an assessment of civil penalties of up to \$32,500.00 per day/per violation for all
16 violations occurring through January 12, 2009, and up to \$37,500.00 per day/per violation for
17 all violations occurring after January 12, 2009. See also 40 CFR § 19.1 - 19.4.

18 **B. Resource Conservation Recovery Act ("RCRA")**

19 53. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person
20 who violates a permit, standard or regulation pursuant to the RCRA. Civil penalties may be
21 assessed against any person or entity in violation of this section, under the provisions of 42
22 U.S.C. §§ 6928(a) and 6928(g), for violations occurring within five (5) years prior to the
23 initiation of a citizen enforcement action.

24 54. RIVER WATCH alleges DEFENDANTS have spilled, stored, handled and/or disposed
25 of toxic materials and pollutants defined as hazardous wastes under the RCRA, in a manner
26 which has allowed these pollutants to be discharged to soil and groundwater beneath and
27 adjacent to the Facilities, in violation of regulations regarding the use and disposal of hazardous
28 wastes, pursuant to RCRA § 3004 (d), 42 U.S.C. § 6924(d). For purposes of RCRA, these toxic

1 hydrocarbon chemicals, petrochemical constituents and byproducts, are both "solid wastes" and
2 "hazardous wastes" within the meaning of the statute.

3 55. RIVER WATCH alleges DEFENDANTS, in their ownership and/or operation of the
4 Facilities, in particular the Richmond Station, have violated provisions of the RCRA governing
5 the use and operation of storage tanks used for the storage of hazardous substances including
6 petroleum products, by reason of DEFENDANTS' unauthorized releases at the Facilities without
7 implementing required and effective cleanup and abatement measures. (In general, see sub-
8 chapter IX, 42 U.S.C. § 6991 *et seq.*)

9 56. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) provides that any person may
10 commence a civil action against any person or governmental entity including a past or present
11 generator, transporter, owner or operator of a treatment, storage or disposal facility who has
12 contributed to the past or present handling, storage, treatment, transportation, or disposal of any
13 solid or hazardous waste which may present an imminent and substantial endangerment to health
14 or to the environment. Civil penalties may be assessed against any person or entity in violation
15 of this section, under the provisions of 42 U.S.C. §§ 6928(a) and 6928(g) for violations
16 occurring within five (5) years prior to the initiation of a citizen enforcement action.

17 57. The RCRA UST regulatory program is adopted and implemented in California under the
18 provisions governing the Underground Storage of Hazardous Substances (California Health &
19 Safety Code § 25280 *et seq.*).

20 58. As set forth in the RCRA NOTICE and this Complaint, toxic petroleum products,
21 petroleum constituents and other pollutants, have been or are being discharged by
22 DEFENDANTS at the Facilities in concentrations significantly greater than allowable Maximum
23 Contaminant Levels and/or Water Quality Objectives for said constituents in violation of RCRA
24 § 6903(5), 42 U.S.C. § 6972(5). RIVER WATCH alleges that pollutants from these substances
25 have leached into soil, ground water and surface waters beneath and adjacent to the Facilities,
26 creating an imminent and substantial endangerment to human health and to the environment.

27 59. DEFENDANTS' discharges to soil and groundwater as alleged in the RCRA NOTICE
28 and this Complaint are in violation of the RCRA's regulations regarding the storage and disposal

1 of hazardous wastes. The violations are established in RWQCB files for the Facilities as well
2 as in studies conducted by DEFENDANTS or their contractors in compliance with orders from
3 the RWQCB or other regulatory agencies.

4 60. DEFENDANTS' discharges to soil and ground water from the Facilities as alleged in the
5 RCRA NOTICE and this Complaint are in violation of the RCRA's prohibition against creating
6 an imminent and substantial endangerment to human health and to the environment. The
7 violations are established in RWQCB files for the Facilities as well as in studies conducted by
8 DEFENDANTS or their contractors in compliance with orders from the RWQCB or other
9 regulatory agencies.

10 VI. FIRST CLAIM FOR RELIEF

11 **Violation of 33 U.S.C. § 1251 *et seq.*, 33 U.S.C. §§ 1342 (a) and (b),
33 U.S.C. § 1311.**

12 **Discharge of Pollutants from a Point Source Must be Regulated by a NPDES Permit**

13 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs
14 I through 60 above, including the CWA NOTICE, as though fully set forth herein. RIVER
15 WATCH is informed and believes, and upon such information and belief alleges as follows:

16 61. DEFENDANTS have violated and continue to violate the CWA as evidenced by the
17 discharges of various toxic hydrocarbon pollutants from a point source (the Facilities) without
18 a NPDES permit in violation of CWA § 301, 33 U.S.C. § 1311.

19 62. Said violations are ongoing and will continue after the filing of this Complaint. RIVER
20 WATCH alleges herein all violations which may have occurred or will occur prior to trial, but
21 for which data may not have been available or submitted or apparent from the face of the reports
22 or data submitted by DEFENDANTS to a regulatory agency including the RWQCB, or to
23 RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will amend this
24 Complaint as necessary to address any violations of the CWA at the Facilities by
25 DEFENDANTS which may occur after the filing of this Complaint.

26 63. Continuing acts or failure to act by DEFENDANTS to address these violations will
27 irreparably harm RIVER WATCH and its members, for which harm they have no plain, speedy
28 or adequate remedy at law. RIVER WATCH alleges that without the imposition of appropriate

1 civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to
2 violate the CWA with respect to the enumerated discharges and releases at the Facilities.
3 Further, the relief requested in this Complaint will redress the injuries to RIVER WATCH and
4 its members, will prevent future injury, and will protect the interests of RIVER WATCH and its
5 members which interests are or may be adversely affected by DEFENDANTS' violations of the
6 CWA as alleged herein.

7 **VII. SECOND CLAIM FOR RELIEF**

8 **Violation of 33 U.S.C. § 1342(p)** 9 **Discharge of Stormwater and/or Stormwater Containing Pollutants Without a NPDES** 10 **Permit and/or in Violation of the General Permit**

11 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs
12 1 through 63 above, including the CWA NOTICE, as though fully set forth herein. RIVER
13 WATCH is informed and believes, and upon such information and belief alleges as follows:

14 64. DEFENDANTS do not comply with CWA § 402(p), which requires industrial dischargers
15 to acquire a NPDES permit for the discharge of storm water, or to file for coverage under the
16 General Permit.

17 65. DEFENDANTS have violated and continue to violate the CWA and the General Permit
18 as evidenced by DEFENDANTS' discharges of storm water containing pollutants from the
19 Facilities identified in this Complaint and the CWA NOTICE to the affected water bodies
20 identified in this Complaint and the CWA NOTICE, in violation of CWA § 301 and CWA §
21 402(p). Said violations are ongoing and will continue after the filing of this Complaint.

22 66. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the
23 issuance of appropriate equitable relief, DEFENDANTS will continue to violate the CWA as
24 well as State and Federal standards with respect to the enumerated discharges and releases from
25 the Facilities as identified in the CWA NOTICE. Further, that the relief requested will prevent
26 future injury and protect the interests RIVER WATCH and its members which interests are or
27 may be adversely affected by DEFENDANTS' violations as alleged herein.

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VIII. THIRD CLAIM FOR RELIEF

Violation of 33 U.S.C. § 1311(a), 33 U.S.C. § 1342(p) Discharges of Stormwater Pollutants Without a NPDES Permit

RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 66 above, including the CWA NOTICE, as though fully set forth herein. RIVER WATCH is informed and believes, and upon such information and belief alleges as follows:

67. Section 301(a) of the Act, 33 U.S.C. § 1331(a), prohibits the discharge of any non-storm water pollutant from any point source to waters of the United States, except for discharges in compliance with a NPDES permit issued pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p).

68. DEFENDANTS discharge non-storm water pollutants from the Facilities into Herman Slough, Walnut Creek, Selby Pond and into the surface waters of the San Francisco Bay through storm water discharges.

69. RIVER WATCH alleges that for at least the past five years DEFENDANTS have discharged and continue to discharge pollutants from the Facilities without having obtained a NPDES permit as required by Section 301(a) of the Act, 33 U.S.C. §§ 1311(a).

70. RIVER WATCH alleges that since the time DEFENDANTS began operations at the Facilities to the present, DEFENDANTS have operated without individual NPDES permit coverage for their polluted storm water discharges, in violation of Sections 301(a) and 402(p)(2)(B) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). The polluted storm water discharges from the Facilities are therefore unlawful discharges of pollutants from point sources into waters of the United States within the meaning of Section 301 of the Act, 33 U.S.C. § 1311. These violations are not wholly past violations, are capable of repetition, and are therefore enforceable in this citizen suit action, because, inter alia, these violations and other ongoing and continuous violations result from the same underlying, and inadequately resolved, causes.

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1 **IX. FOURTH CLAIM FOR RELIEF**

2 **Violation of 42 U.S.C. § 6972(a)(1)(A)**

3 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs
4 1 through 70 above, including the RCRA NOTICE as though fully set forth herein. RIVER
5 WATCH is informed and believes, and upon such information and belief alleges as follows:

6 71. DEFENDANTS have violated and continue to violate the RCRA as evidenced by the
7 discharge of hazardous wastes from the Facilities to soil, groundwater and surface water in
8 violation of RCRA § 3004 (d), 42 U.S.C. § 6924(d), and by reason of DEFENDANTS' use and
9 operation of above ground storage tanks in violation of RCRA § 9002(a), 42 U.S.C. §6991(a).

10 72. Continuing acts or failure to act by DEFENDANTS to address these violations will
11 irreparably harm RIVER WATCH and its members, for which harm they have no plain, speedy
12 or adequate remedy at law. RIVER WATCH alleges that without the imposition of appropriate
13 civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to
14 violate the RCRA with respect to the enumerated discharges and releases at the Facilities.
15 Further, the relief requested in this Complaint will redress the injuries to RIVER WATCH and
16 its members, will prevent future injury, and will protect the interests of RIVER WATCH and its
17 members which interests are or may be adversely affected by DEFENDANTS' violations of the
18 RCRA as alleged herein

19 **X. FIFTH CLAIM FOR RELIEF**

20 **Violation of 42 U.S.C. § 6972(a)(1)(B)**

21 RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 72
22 and the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed and
23 believes, and upon such information and belief alleges as follows:

24 73. DEFENDANTS own and/or operate or have owned and/or operated the Facilities at
25 which DEFENDANTS store or have stored, and transfer or have transferred, and/or dumped,
26 spilled, buried and discharged, toxic and harmful chemical products and constituents, and are
27 now legally responsible for the remediation of the Facilities.

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1 74. As alleged in the RCRA NOTICE and this Complaint, the Facilities either have petroleum
2 storage tanks, pipelines, impoundments, pits, and/or ponds which are leaking, or in the past have
3 leaked, a variety of toxic chemicals including TPHg, TPHD, benzene, MTBE and other
4 contaminants of concern into groundwater; or where such chemicals have been washed off the
5 Facilities, or have been discharged, or have migrated, into nearby surface waters. Said
6 contaminants are known to be hazardous to the environment, and have been released into the
7 environment in sufficient quantity to pose an imminent and substantial risk to public health and
8 to the environment.

9 75. Continuing acts or failure to act by DEFENDANTS to address these violations will
10 irreparably harm RIVER WATCH and its members, for which harm they have no plain, speedy
11 or adequate remedy at law. RIVER WATCH alleges that without the imposition of appropriate
12 civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to
13 violate the RCRA with respect to the enumerated discharges and releases at the Facilities.
14 Further, the relief requested in this Complaint will redress the injuries to RIVER WATCH and
15 its members, will prevent future injury, and will protect the interests of RIVER WATCH and its
16 members which interests are or may be adversely affected by DEFENDANTS' violations of the
17 RCRA as alleged herein.

18 **XI. SIXTH CLAIM FOR RELIEF**

19 **Violation of 42 U.S.C. § 6924 *et seq.***

20 RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 75
21 and the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed and
22 believes, and upon such information and belief alleges as follows:

23 76. DEFENDANTS have (1) failed to adequately maintain records of their hazardous wastes
24 including petroleum products, petrochemicals and contaminants of concern which were treated,
25 stored or otherwise disposed of on or offsite of the Facilities as identified in the RCRA NOTICE
26 and this Complaint in violation of 42 U.S.C. § 6924(a)(1); (2) failed to satisfactorily monitor,
27 inspect, and report said hazardous wastes in violation of 42 U.S.C. § 6924(a)(2); (3) failed to
28 adequately treat, store or properly dispose of said hazardous wastes in violation of 42 U.S.C. §

1 6924(a)(3); (4) failed to adequately locate, design and construct hazardous waste treatment,
2 storage or disposal facilities in violation of 42 U.S.C. § 6924(a)(4); and, (5) failed to properly
3 implement contingency plans for effective action to minimize unanticipated damage from the
4 treatment, storage or disposal of said hazardous wastes in violation of 42 U.S.C. § 6924(a)(5).
5 77. Continuing acts or failure to act by DEFENDANTS to address these violations will
6 irreparably harm RIVER WATCH and its members, for which harm they have no plain, speedy
7 or adequate remedy at law. RIVER WATCH alleges that without the imposition of appropriate
8 civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to
9 violate the RCRA with respect to the enumerated discharges and releases at the Facilities.
10 Further, the relief requested in this Complaint will redress the injuries to RIVER WATCH and
11 its members, will prevent future injury, and will protect the interests of RIVER WATCH and its
12 members which interests are or may be adversely affected by DEFENDANTS' violations of the
13 RCRA as alleged herein.

14 **XII. SEVENTH CLAIM FOR RELIEF**

15 **Violation of 42 U.S.C. § 6925 *et. seq.***

16 RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 77
17 and the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed and
18 believes, and based on such information and belief alleges:

19 78. DEFENDANTS have engaged or are engaging in the unpermitted handling, storage,
20 treatment, transportation and/or disposal of hazardous wastes at the Facilities in violation of
21 RCRA § 3005, 42 U.S.C. § 6925, which activities have resulted in the generation and discharge
22 of said hazardous wastes to the environment.

23 79. Continuing acts or failure to act by DEFENDANTS to address these violations will
24 irreparably harm RIVER WATCH and its members, for which harm they have no plain, speedy
25 or adequate remedy at law. RIVER WATCH alleges that without the imposition of appropriate
26 civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to
27 violate the RCRA with respect to the enumerated discharges and releases at the Facilities.
28 Further, the relief requested in this Complaint will redress the injuries to RIVER WATCH and

1 its members, will prevent future injury, and will protect the interests of RIVER WATCH and its
2 members which interests are or may be adversely affected by DEFENDANTS' violations of the
3 RCRA as alleged herein.

4 **XIII. EIGHTH CLAIM FOR RELIEF**

5 **Creating Imminent and Substantial Endangerment to Health or to the Environment** 6 **(42 U.S.C. § 6972(a)(1)(B) specifically - Prohibition Against Open Dumping -** 7 **42 U.S.C. § 6945)**

8 RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 79
9 and the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed and
10 believes, and based on such information and belief alleges:

11 80. Under 42 U.S.C. § 6944 a facility may be classified as a sanitary landfill and not an open
12 dump only if there is no reasonable probability of adverse affects on health or the environment
13 from disposal of solid waste at such facility.

14 81. As alleged in the RCRA NOTICE and this Complaint, DEFENDANTS used, transported,
15 stored and handled petrochemicals at the Facilities in such a manner that they were illegally
16 discharged to permeable surfaces and surface drainage at the Facilities thereby discharging
17 pollutants to the open ground and allowing these pollutants to discharge to both ground and
18 surface waters. DEFENDANTS are guilty of open dumping as that term is used in RCRA.

19 82. The Facilities do not qualify as landfills under 42 U.S.C. § 6944, and do not qualify as
20 facilities for the disposal of hazardous waste or solid waste. DEFENDANTS possess no RCRA-
21 authorized permit for disposal, storage or treatment of solid or hazardous waste of the type
22 currently and historically discharged at the Facilities.

23 83. Information currently available to RIVER WATCH indicates that due to the fact that
24 these solid and hazardous wastes remain at the Facilities and that DEFENDANTS have failed
25 to remove these solid and hazardous wastes, DEFENDANTS are guilty of open dumping in
26 violation of RCRA § 4005 on numerous separate occasions, and that those violations are
27 continuing.

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1 84. Continuing acts or failure to act by DEFENDANTS to address these violations will
2 irreparably harm RIVER WATCH and its members, for which harm they have no plain, speedy
3 or adequate remedy at law.

4 **XIV. PRAYER FOR RELIEF**

5 Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, respectfully requests this Court
6 grant the following relief:

7 85. Declare DEFENDANTS to have violated and to be in violation of the CWA with respect
8 to the Facilities;

9 86. Issue an injunction ordering DEFENDANTS to immediately clean up and abate the
10 Facilities in compliance with the CWA and any applicable State and Federal standards;

11 87. Order DEFENDANTS to pay civil penalties on a per violation/per day basis for each
12 violation of the CWA;

13 88. Declare DEFENDANTS to have violated and to be in violation of the RCRA;

14 89. Order DEFENDANTS to comply with all of the substantive and procedural requirements
15 of the RCRA with respect to the Facilities;

16 90. Issue an injunction ordering DEFENDANTS to immediately clean up and abate the
17 Facilities in compliance with the RCRA and with any applicable State and Federal standards;

18 91. Enjoin DEFENDANTS from discharging toxic chemicals and chemical constituents and
19 byproducts from the Facilities which pose an imminent and substantial risk to health and the
20 environment;

21 92. Order DEFENDANTS to pay civil penalties on a per violation/per day basis, for each
22 violation of the RCRA; and/or to pay for remediation projects to redress harm caused by
23 DEFENDANTS' violations of the RCRA;

24 93. Impose injunctive relief requiring DEFENDANTS to immediately investigate, access and
25 categorize the extent of pollution at and adjacent to the Facilities and implement the "best
26 available technology" to remediate the same;

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1 94. Award costs (including reasonable attorney, expert, witness, and consultant fees) to
2 Plaintiff NORTHERN CALIFORNIA RIVER WATCH as authorized by the CWA and RCRA;
3 and,

4 95. Award such other relief as this Court may deem just and proper.
5

6 DATED: February 16, 2012



JACK SILVER
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***VIA CERTIFIED MAIL - -
RETURN RECEIPT REQUESTED***

March 14, 2011

Chief Executive Officer
Kinder Morgan, Inc.
500 Dallas Street, Suite 1000
Houston TX 77002

Managing Partner
Kinder Morgan Energy Partners, L.P.
1100 Town & Country Road
Orange, CA 92868

Managing Partner
SFPP, L.P.
1100 Town & Country Road
Orange, CA 92868

Re: Notice of Violations and Intent to File Suit under the Clean Water Act

Dear Owners, Partners, Site Managers and other Responsible Parties:

NOTICE

On behalf of Northern California River Watch, I am providing statutory notification to Kinder Morgan, Inc., Kinder Morgan Energy Partners, L.P. and SFPP, L.P., hereafter referred to as "Responsible Parties", of continuing and ongoing violations of the federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, also known as the Clean Water Act, hereafter referred to as the "CWA", in conjunction with continuing operations at several current and/or former underground storage sites and current pipeline sites in Northern California. The CWA requires that sixty (60) days prior to the initiation of an action for a violation of its provisions, a private party must give notice of the violation to the alleged violator, the Administrator of the U.S. Environmental Protection Agency and the State in which the violation is alleged to have occurred.

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specific standard, limitation, or order alleged to have been violated.

This Notice addresses the failure of Responsible Parties to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID 228S003380), their illegal discharges of contaminated storm water from their sites, their discharges of non-storm water pollutants from their sites in violation of effluent limitations, and their apparent violations of the procedural requirements of National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p), hereafter referred to as the "General Permit".

In keeping with notice requirements, River Watch alleges that Responsible Parties have violated "effluent standards or limitations" by allowing petroleum hydrocarbons above State of California's Maximum Contaminant Levels to be released and discharged into waters of the United States – specifically into Herman Slough in Richmond, California, Walnut Creek in Concord, California, Selby Pond in Rodeo, California, and into the surface waters of the San Francisco Bay as further investigation may disclose, without the benefit of any NPDES or other permit authorizing such discharges.

2. The activity alleged to constitute a violation.

River Watch has set forth narratives below identifying discharges to hydrologically-connected groundwater and surface waters leading to violations of the CWA, and describing with particularity specific incidents which may or may have not been reported in public reports and other public documents in the possession of Responsible Parties or otherwise available to them. River Watch incorporates by reference the records cited below from which descriptions of specific incidents were obtained.

3. The person or persons responsible for the alleged violation.

The person or persons responsible for the alleged violations are Kinder Morgan, Inc., Kinder Morgan Energy Partners, L.P. and SFPP, L.P., as the owners and/or operators or partial operators of the sites identified herein. The parties are identified individually herein and collectively as "Responsible Parties". This Notice includes the named entities as well as all of their employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits as relate to the sites identified in this Notice.

4. *The location of the alleged violations.*

The location or locations of the various violations are identified in records either created or maintained by or for Responsible Parties, including the records cited further in this Notice and the description of specific incidents referenced below. Specific sites are identified as:

Richmond Station, 520 Castro Street, Richmond, CA
Concord Station, 1550 Solano Way, Concord, CA
Selby Pond Release Site, San Pablo Avenue, Rodeo, CA.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined State Water Resource Control Board and Regional Water Quality Control Board records for the period from March 8, 2006 to March 8, 2011, which is the range of dates covered by this Notice. River Watch contends hydrocarbon releases at the sites identified herein have occurred as far back as 1985. River Watch will from time to time update this Notice to include all violations of the CWA by Responsible Parties which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

River Watch hereby places Responsible Parties on notice that following the expiration of sixty (60) days from the service of this Notice, River Watch intends to bring suit in Federal District Court against Responsible Parties for their continuing violations of "an effluent standard or limitation", "permit, condition or requirement", and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under CWA §505(a)(1), 33 U.S.C. §1365(a)(1), the Code of Federal Regulations, and/or the Regional Water Quality Control Board's Basin Plan, as exemplified by the incidents of non-compliance specified below.

The activities leading to these CWA violations are more fully described below in each of the sections highlighting unauthorized discharges. River Watch contends Responsible Parties to be liable for these violations based upon their conduct at each of the sites, and/or because Responsible Parties have assumed legal responsibility to remediate one or more of the listed sites where previous site owners or operators may have contributed to unauthorized discharges. The dates of these violations correspond with the dates of each initial unauthorized release, although following each release the downgradient surface waters would not have been immediately impacted, but would have been contaminated at later dates consistent with the rate of off-site plume migration through conduits or other preferential pathways, or via groundwaters, or via surface migration of petroleum contamination during heavy rain events.

The violations set forth herein are alleged to be continuing in nature in that the sources of pollution impacting surface waters have not been eliminated to date. Pursuant to CWA §309(d), 33 U.S.C. §1319(d), each of the violations described herein subjects the violator to a penalty of up to \$25,000.00 per day/per violation for each violation occurring within the five year period prior to the initiation of a citizen enforcement action. In addition to civil penalties paid to the U.S. Treasury, River Watch will seek injunctive relief in the interest of preventing further violations of the CWA pursuant to CWA §§505(a) and 505(d), 33 U.S.C. §§1365(a) and 1365(d), and such other relief as is permitted by law. Finally, CWA §505(d), 33 U.S.C. §1365(d) permits prevailing parties to recover costs and reasonable attorney fees.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, email: US@ncriverwatch.org which is referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675
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SITES AND BACKGROUND HISTORY

Kinder Morgan Energy Partners, Richmond Station 520 Castro Street, Richmond, CA

This site is located in a heavy industrial area bordered by a Union Pacific rail yard to the east and south, by Castro Street and the General Chemical Plant and Chevron Products Company to the west, and by the SFPP, LP underground pipeline corridor and Union Pacific rail lines to the north.

The initial unauthorized petroleum releases at this site occurred in 2002. In March of 2002, an above-ground gasket failure caused an extensive hydrocarbon release. In September of that year a flange failure in a buried pipeline resulted in another. Petroleum

hydrocarbon contamination was recovered from the ground surfaces in the manifold area of the site, a southeastern drainage ditch area, a storm drain on the property, and from Herman Slough to the south, adjacent to the Chevron Refinery site. Following cleanup efforts, soil borings were installed in the manifold area to assess the extent of contamination resulting from these releases. Thereafter, over-excavation of the area was conducted, and the affected soil was removed. Engineering consultants for Kinder Morgan Energy Partners, L.P. estimate that between 19,100 and 35,220 pounds of petroleum hydrocarbons were recovered due to the initial product recovery efforts and excavation work done at that time.

Groundwater monitoring of the extent of residual contamination has occurred since 2003. In addition, the company built a concrete slurry wall along the eastern and southern portions of the site in November of 2002 extending to six ft. bgs, and thought to be sufficient to prevent shallow, downgradient migration of the hydrocarbon contamination. Groundwater flow is generally to the southwest, has typically been found within 5 ft. bgs., and is considered to be tidally influenced by the proximity of the Bay.

Other than the initial over-excavation, construction of the slurry wall and a very limited period of groundwater extraction in July of 2005, documents available to River Watch at this time indicate no remediation work has been conducted for the purpose of reducing or eliminating the hydrocarbon contamination that lies in a large plume beneath the property.

At the present time, the engineering consultant is relying upon nothing more than natural attenuation in the hope of eventually achieving complete remediation. However, on the basis of the last available site monitoring records (GeoTracker: 12/15/2009), considerable contamination remains in groundwater despite the current strategies being used.

Third quarter analytical findings of monitoring wells indicate pure hydrocarbon product (SPH) sheen has been observed in three wells (PRW-4A, PRW-28 and PRW-36), and in seven wells at the time of the fourth quarter monitoring (PRW-4A, PRW-12, PRW-17, PRW-21, PRW-28, PRW-31, and PRW-32). The presence of hydrocarbon sheen in this number of wells tends to belie the estimates that natural attenuation is successfully achieving remediation. Findings in consultant reports in 2005 (2d qtr.) and in 2007 (3d and 4th qtrs.) indicate almost no evidence of hydrocarbon sheens in the wells.

These analytical findings in late 2009 also reflect high levels of petroleum constituent contamination. TPHg (aka GRO) was found as high as 30,000 µg/l, TPHd was found as high as 45,000 µg/l, TPHe (oil range organics) was found as high as 18,000 µg/l, benzene was found as high as 1,300 µg/l, MTBE was found as high as 11,000 µg/l, TBA was found as high as 5,200 µg/l, and TAME was found as high as 3,900 µg/l.

Documents available to River Watch reflect that a full scale evaluation of the site has not been conducted to date. It appears that some data has not been gathered, or at least is not readily available. River Watch believes that in order to adequately remediate a given hydrocarbon contamination site, a number of preliminary investigatory steps must be taken before effective clean up can be accomplished. Some of these steps are listed below. On the basis of the current condition of this site, River Watch believes the following investigatory and remediation work must be implemented immediately:

1. Complete delineation of the site (including vertical delineation) for the purpose of enabling a comprehensive evaluation as to the extent of underlying contamination so that further remediation work may proceed. This should include an evaluation of the potential for migration beneath the shallow slurry wall where sheen was found in four wells beyond the wall (downgradient of the site) in 2007;
2. Initiation of vapor intrusion testing in any buildings or work areas (if any) above the plume to determine whether nearby employees at the site and/or third parties are being exposed to injurious levels of hydrocarbon, benzene or other toxic vapors;
3. Consideration of further over-excavation to eliminate lingering sources of SPH, MTBE, and petroleum hydrocarbon constituents from migrating into offsite groundwater and surface waters;
4. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells. This should include testing of Herman Slough for SPH in the same areas where SPH was initially recovered in 2002;
5. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite, and under or around the slurry wall;
6. Current residual mass calculations which will allow the measurement of remediation progress once remediation processes are initiated.
7. Initiation of proactive remediation work (beyond natural attenuation strategies) as soon as the necessary investigations and assessments are concluded.

Kinder Morgan Concord Station
1550 Solano Way, Concord, California

The Concord Station is owned and operated by SFPP, L.P., an operating partnership to Kinder Morgan Energy Partners, L.P. The Concord Station is a 38-acre petroleum fuel storage (tank farm) and distribution facility located on Solano Way. This facility stores gasoline, diesel and jet fuel which is then delivered to various outlets and industrial users.

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In the first and second quarters of 2010, measurable SPH was detected in eight mobile product recovery monitoring points in Area I. Thicknesses of SPH at these points has recently been as much as 4.25 feet. During the first quarter of 2010, an increase in product thickness was observed in three of these monitoring wells. Daily monitoring of EX-18 and EX-19 began in 2009 after large increases in SPH levels were observed in these two wells. The daily monitoring continues to the present date.

In wells without SPH or a hydrocarbon sheen, TPHg levels have recently been found as high as 17,000 µg/l, benzene as high as 5,100 µg/l, and MTBE as high as 790 µg/l. Over the last 12 years, MTBE has *increased* in both shallow well LF-16 and deep well LF-27, which may have resulted from a sub-surface pipeline leak occurring in 1988.¹ In these same wells, TPHg has doubled during the past year of monitoring, despite existing remediation efforts.

To address the levels of contaminants, TRC, the engineering consultant, has adopted a mobile product recovery program (conducted monthly in eight wells) to extract product from each of the wells using a pump. Once the product is removed from a given well, the next well in line is addressed. But according to TRC, the pumping is conducted a maximum of only three times at a well with SPH, even though additional pumping would recover contamination from the groundwater.²

¹ TRC, First and Second Quarter 2010 Groundwater Monitoring Report, sec. 3.2.4.

² TRC, *supra*, sec. 4.1.

In addition to the phytoremediation described above, a "total fluids extraction system" has been deployed for some time. This system transfers recovered fluids to an onsite oil/water separator. The "total fluids extraction system" appears to be a minimalist remediation strategy, inasmuch as only 45 gallons of product and water were recovered during the first two quarters of 2010, and only 7,525 gallons of product and water have been recovered since the program was initiated in October of 1998, over 12 years ago.

There is also a water treatment system designed to remove some dissolved-phase petroleum hydrocarbons from groundwater, which apparently is integrally connected to the treatment of process water generated as part of site operations. TRC indicates additional remediation is in the planning stages, to include more downgradient tree planting.

In February of 2010 hydrocarbon sheens were seen in 35 of 57 wells where product thicknesses were measured, and measurable SPH in an additional five of the extraction wells. In May of 2010, hydrocarbon sheens were found in 34 of these wells, with measurable SPH in an additional four wells.

On the basis of remediation work that has been and is being conducted, it is apparent to River Watch that efforts to clean up this site have been ineffective over the past 25 years since the first release was recorded. On the basis of the current condition of the site, River Watch believes the following investigatory and remediation work must be implemented immediately:

1. Complete delineation of the site (including vertical delineation) for the purpose of enabling further remediation work to proceed with the benefit of a comprehensive evaluation of the full extent and location of the existing contamination. This should include an evaluation of the potential for contaminant migration beneath the phytoremediation plantings to the southwest of Area IV;
2. Initiation of vapor intrusion testing in any buildings or work areas (if any) above the plume to determine whether nearby employees at the site and/or third parties are being exposed to injurious levels of hydrocarbons, benzene or other toxic vapors;
3. Consideration of further over-excavation in each of the areas where hydrocarbon sheens have been observed to eliminate lingering sources of SPH, MTBE, and petroleum hydrocarbon constituents from migrating into offsite groundwater and surface waters;

4. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells. This should include testing of downgradient Walnut Creek for SPH, inasmuch as this Creek lies only 250 ft. beyond the boundary of Area IV;
5. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite;
6. Current residual mass calculations which will allow the measurement of remediation progress once remediation processes are initiated;
7. Initiation of proactive and aggressive remediation work as soon as the necessary investigations and assessments are concluded, and could include dual-phase extraction on a 24/7 basis to substantially reduce the extent of ongoing contamination.

**Kinder Morgan Energy Partners, L.P. – Selby Pond Release Site
San Pablo Avenue, Rodeo, CA**

Kinder Morgan Energy Partners, L.P. and SFPP, L.P. operate a large pipeline which transports gasoline and diesel extending from Richmond and Concord and as far south as San Jose. In February of 1996, the transported products included MTBE. In that month a small leak in the pipeline was discovered northeast of San Pablo Avenue in Rodeo, causing a sheen on an ephemeral surface water known as Selby Pond.

Groundwater in this area is tidally influenced by the proximity of San Pablo Bay, approximately 500 ft. to the northwest. Groundwater flows to the northwest, and ranges from between one and four feet bgs. Selby Pond is seasonal open water, but is seasonally dry. When fed by rainwater and runoff, the Pond is approximately 600 ft. x 300 ft. with its northwestern edge only several hundred feet from the Bay.

By September of 1996, the affected areas of the pipeline had been replaced, hydrocarbon contaminated soil had been over-excavated, some lost product had been recovered, and the existing water in the Pond had been air sparged. By year 2000 a regular, groundwater monitoring program was finally commenced.

In October of 2006, following 5 years of semi-annual monitoring, MTBE levels at SP-1 and SP-2 (the two monitoring wells at the site with the worst contamination) were still extremely high: 440,000 µg/l and 270,000 µg/l, respectively. In October of 2008, the date of the last monitoring on the basis of data uploaded to GeoTracker, the MTBE levels in these two wells were 170,000 µg/l and 150,000 µg/l., and TPHg levels were as high as 73,000 µg/l and 76,000 µg/l.

On the basis of records and documents reviewed to date, it is apparent that LFR, Inc., the engineering consultant, has conducted no appreciable remediation since 1996 other than the initial response to the hydrocarbon and MTBE release of unknown size. There has apparently been no attempt to determine whether preferential pathways and tidal variations in groundwater may be pulling contamination into the Bay. No efforts at bioremediation have been initiated, and the most the consultant can say about the extremely high levels of MTBE is that the observed levels of the contaminant are gradually decreasing.

This site continues to represent an immediate threat to domestic water supplies and environmental degradation by infiltration into the Bay. Given the current condition of this area, River Watch believes the following remediation work must be implemented immediately:

1. Complete delineation for the purpose of enabling further remediation work to proceed;
2. Completion of current sensitive receptor survey to outline and prevent threats to offsite surface waters including Selby Pond;
3. Completion of current preferential pathway study to determine whether there are conduits, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite and/or into the Bay;
4. Initiation of active remediation work by way of further source removal, bioremediation or other remediation strategies to eliminate any further contamination threat to groundwater and downgradient surface waters;
5. Completion of a current aquifer profile to determine whether the MTBE/TPHg plume has impacted any underlying aquifer in communication with groundwater under the site;
6. Current residual mass calculations which will allow the measurement of remediation progress once removal processes are initiated.

REGULATORY STANDARDS

The CWA regulates the discharge of pollutants into waters of the United States. This statute is structured in such a way that all discharges of pollutants are prohibited with the exception of certain enumerated discharges such as those for which an NPDES permit has issued. Citizen suits for violations of provisions of the CWA are authorized under 33 U.S.C. §1365, following a notice that conforms to the requirements of subpart (b) of that section.

The provisions of the CWA govern the discharges of hazardous substances, including petroleum hydrocarbons, into surface waters of the United States.

Water Quality Objectives exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels.

Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply. The Regional Water Quality Control Board has adopted a Water Quality Control Plan or "Basin Plan", which designates all surface and groundwater within the North Coast and San Francisco Bay regions as capable of supporting domestic water supply. The Board has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene, 150 ppb for toluene and 13 ppb for MTBE.

VIOLATIONS

Between March 1, 2006 and March 1, 2011, Responsible Parties have caused or permitted, cause or permit, or threaten to cause or permit, petroleum contaminants, petroleum constituents and other hazardous waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and now creates, or threatens to create, a condition of pollution or nuisance. The discharge and threatened discharge of such petroleum waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

Between March 1, 2006 and March 1, 2011, Responsible Parties' use and storage of petroleum at the three sites identified in this Notice, has allowed significant quantities of hazardous petroleum constituents to be released or discharged into soil and groundwater in violation of provisions of the CWA and California underground storage tank regulatory programs including, but not limited to, provisions governing general operating requirements for underground storage tank release detection and prevention requirements, release reporting and investigation requirements, and release response and corrective action requirements. Such discharges have also been allowed to impact waters of the United States in violation of the CWA.

Between March 1, 2006 and March 1, 2011, Responsible have used, stored and transported, and continue to use, store and transport, petroleum products at the three sites identified in this Notice, in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath each of the sites and beneath adjacent properties, and to surface waters lying downgradient from the sites. The contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater at each of the sites are significantly greater than the allowable MCLs and/or WQOs for said constituents. Benzene, MTBE, TAME, and TBA are known or suspected carcinogens. Toluene is a reproductive toxin. Ethylbenzene, methanol and xylene are live toxins. All are known to harm both plants and animals. In their concentration at these sitse, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

The violations alleged in this Notice are knowing and intentional in that River Watch contends Responsible Parties have used, stored, transported and sold petroleum products at the sites identified in this Notice which are known to contain hazardous substances, and have intended that such products will be sold to and used by the public. Responsible Parties have known of the contamination at these sites since at least 1985, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the sites, and to continually contaminate and re-contaminate actual and potential sources of drinking water as well as adjacent surface waters.

Violations of the CWA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

In addition to the violations set forth above, this Notice is intended to cover all violations of the CWA by Responsible Parties evidenced by information which becomes available to River Watch after the date of this Notice.

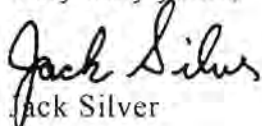
The violations of the CWA by Responsible Parties as set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by the violations of the CWA as alleged in this Notice.

CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of the CWA as to each of the sites referenced above. At the close of the notice period or shortly thereafter, River Watch intends to file a suit against

Responsible Parties for each of the violations as alleged herein. However, River Watch is willing to discuss effective remedies for the violations referenced in this Notice during the 60 day notice period. If you wish to pursue such discussions in the absence of litigation, we would encourage you to initiate such discussions immediately so that we might be on track to resolving the issues raised in this Notice. River Watch will not delay the filing of a lawsuit if discussions have not commenced within a reasonable time following the service of this Notice.

Very truly yours,


Jack Silver

JS:lhmm

cc: Administrator
U.S. Environmental Protection Agency
401 M Street, N.W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

SFPP, L.P.
1140 Canal Blvd.
Richmond, CA 94804

CT Corporation System, Registered Agent
SFPP, L.P.
350 N. St. Paul Street, Suite 2900
Dallas, TX 75201

Corporation Company dba CSC - Lawyers
Incorporating Service, Registered Agent
Kinder Morgan, Inc.
211 E. 7th Street, Suite 520
Austin, TX 78701

CT Corporation System, Registered Agent
Kinder Morgan Energy Partners, L.P.
350 N. St. Paul Street, Suite 2900
Dallas, TX 75201

EXHIBIT B

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***VIA REGISTERED MAIL - -
RETURN RECEIPT REQUESTED***

March 14, 2011

Chief Executive Officer
Kinder Morgan, Inc.
500 Dallas Street, Suite 1000
Houston TX 77002

Managing Partner
Kinder Morgan Energy Partners, L.P.
1100 Town & Country Road
Orange, CA 92868

Managing Partner
SFPP, L.P.
1100 Town & Country Road
Orange, CA 92868

**Re: Notice of Violations and Intent to File Suit under the Resource
Conservation and Recovery Act**

Dear Owners, Partners, Site Managers and other Responsible Parties:

NOTICE

On behalf of Northern California River Watch (hereafter, "River Watch") I am providing statutory notification to Kinder Morgan, Inc., Kinder Morgan Energy Partners, L.P. and SFPP, L.P., (hereafter, "Responsible Parties") of your continuing and ongoing violations of the federal Resource Conservation and Recovery Act ("RCRA," 42 U.S.C. § 6901 et seq.) in conjunction with former or continuing operations at the sites identified in this Notice. River Watch also intends to provide notice of the same violations to each of the owners of the real property on which the sites are situated. Pursuant to provisions of the RCRA, the current owners of the real properties underlying these sites may be in part responsible for ongoing contamination due to mere ownership of the real property under which hazardous contamination has been found.

River Watch hereby notifies you that at the expiration of the appropriate notice periods provided under the RCRA, River Watch intends to commence a civil action against Responsible Parties on the following grounds:

1. Responsible Parties' handling, transportation and unauthorized releases of various petroleum products at the sites identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding the past and/or present handling, storage, treatment, transportation and/or disposal of hazardous products (42 U.S.C. § 6972 (a)(1)(A));
2. Responsible Parties' past and current operations at the sites identified in this Notice have caused petroleum contamination in soils, in groundwater and in surface waters which presents an imminent and substantial endangerment to human health and the environment (42 U.S.C. § 6972 (a)(1)(B); and,
3. Responsible Parties' past and current operations at the sites identified in this Notice violates the provisions of RCRA subchapter III (Subtitle C) which governs the handling of hazardous wastes. River Watch contends Responsible Parties have inadequately maintained records of the manner in which hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning wastes; inadequately provided storage or transportation facilities for wastes; and, in the past have not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which has presented and continues to present a substantial endangerment to human health and to the environment.

SITES AND BACKGROUND HISTORY

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Slough to the south, adjacent to the Chevron Refinery site. Following cleanup efforts, soil borings were installed in the manifold area to assess the extent of contamination resulting from these releases. Thereafter, over-excavation of the area was conducted, and the affected soil was removed. Engineering consultants for Kinder Morgan Energy Partners, L.P. estimate that between 19,100 and 35,220 pounds of petroleum hydrocarbons were recovered due to the initial product recovery efforts and excavation work done at that time.

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In addition to the phytoremediation described above, a "total fluids extraction system" has been deployed for some time. This system transfers recovered fluids to an onsite oil/water separator. The "total fluids extraction system" appears to be a minimalist remediation strategy, inasmuch as only 45 gallons of product and water were recovered during the first two quarters of 2010, and only 7,525 gallons of product and water have been recovered since the program was initiated in October of 1998, over 12 years ago.

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1. Complete delineation of the site (including vertical delineation) for the purpose of enabling further remediation work to proceed with the benefit of a comprehensive evaluation of the full extent and location of the existing contamination. This should include an evaluation of the potential for contaminant migration beneath the phytoremediation plantings to the southwest of Area IV;
2. Initiation of vapor intrusion testing in any buildings or work areas (if any) above the plume to determine whether nearby employees at the site and/or third parties are being exposed to injurious levels of hydrocarbons, benzene or other toxic vapors;
3. Consideration of further over-excavation in each of the areas where hydrocarbon sheens have been observed to eliminate lingering sources of SPH, MTBE, and petroleum hydrocarbon constituents from migrating into offsite groundwater and surface waters;
4. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells. This should include testing of downgradient Walnut Creek for SPH, inasmuch as this Creek lies only 250 ft. beyond the boundary of Area IV;³

³ In 1987 a thick layer of SPH was found on the surface of Walnut Creek resulting from the outflow of a 66 inch storm drain from the Concord property. The storm drain was found to have a number of leaky joints through which SPH had entered the drain system.

5. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite;
6. Current residual mass calculations which will allow the measurement of remediation progress once remediation processes are initiated;
7. Initiation of proactive and aggressive remediation work as soon as the necessary investigations and assessments are concluded, and could include dual-phase extraction on a 24/7 basis to substantially reduce the extent of ongoing contamination.

**Kinder Morgan Energy Partners, L.P. – Selby Pond Release Site
San Pablo Avenue, Rodeo, CA**

Kinder Morgan Energy Partners, L.P. and SFPP, L.P. operate a large pipeline which transports gasoline and diesel extending from Richmond and Concord and as far south as San Jose. In February of 1996, the transported products included MTBE. In that month a small leak in the pipeline was discovered northeast of San Pablo Avenue in Rodeo, causing a sheen on an ephemeral surface water known as Selby Pond.

Groundwater in this area is tidally influenced by the proximity of San Pablo Bay, approximately 500 ft. to the northwest. Groundwater flows to the northwest, and ranges from between one and four feet bgs. Selby Pond is seasonal open water, but is seasonally dry. When fed by rainwater and runoff, the Pond is approximately 600 ft. x 300 ft. with its northwestern edge only several hundred feet from the Bay.

By September of 1996, the affected areas of the pipeline had been replaced, hydrocarbon contaminated soil had been over-excavated, some lost product had been recovered, and the existing water in the Pond had been air sparged. By year 2000 a regular, groundwater monitoring program was finally commenced.

In October of 2006, following 5 years of semi-annual monitoring, MTBE levels at SP-1 and SP-2 (the two monitoring wells at the site with the worst contamination) were still extremely high: 440,000 µg/l and 270,000 µg/l, respectively. In October of 2008, the date of the last monitoring on the basis of data uploaded to GeoTracker, the MTBE levels in these two wells were 170,000 µg/l and 150,000 µg/l., and TPHg levels were as high as 73,000 µg/l and 76,000 µg/l.

On the basis of records and documents reviewed to date, it is apparent that LFR, Inc., the engineering consultant, has conducted no appreciable remediation since 1996 other than the initial response to the hydrocarbon and MTBE release of unknown size. There has apparently been no attempt to determine whether preferential pathways and tidal variations

in groundwater may be pulling contamination into the Bay. No efforts at bioremediation have been initiated, and the most the consultant can say about the extremely high levels of MTBE is that the observed levels of the contaminant are gradually decreasing.

Given the current condition of this area, River Watch believes the following remediation work must be implemented immediately:

1. Complete delineation for the purpose of enabling further remediation work to proceed;
2. Completion of current sensitive receptor survey to outline and prevent threats to offsite surface waters including Selby Pond;
3. Completion of current preferential pathway study to determine whether there are conduits, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite and/or into the Bay;
4. Initiation of active remediation work by way of further source removal, bioremediation or other remediation strategies to eliminate any further contamination threat to groundwater and downgradient surface waters;
5. Completion of a current aquifer profile to determine whether the MTBE/TPHg plume has impacted any underlying aquifer in communication with groundwater under the site;
6. Current residual mass calculations which will allow the measurement of remediation progress once removal processes are initiated.

REGULATORY STANDARDS

The Resource Conservation and Recovery Act of 1976 is a federal environmental law of the United States the goals of which are the protection of the public and the environment from harm caused by waste storage and disposal, and to mandate the proper remediation of soil and groundwater contaminated by hazardous waste and hazardous products, including petroleum hydrocarbons and gasoline formula constituents. The Act establishes a national policy that, wherever feasible, the generation of hazardous waste must be reduced or eliminated as expeditiously as possible. It is a strict liability statute with a statute of limitations of five years. Pursuant to the provisions of the RCRA, California has enacted laws and regulations which must be observed in conjunction with RCRA regulations.

California's "Water Quality Objectives" exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality

criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply.

The Regional Water Quality Control Board has adopted a Water Quality Control Plan ("Basin Plan") which designates all surface and groundwater within the North Coast and San Francisco Bay regions as capable of supporting domestic water supply. The Board has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene, 150 ppb for toluene and 5 ppb for MTBE.

VIOLATIONS

Permits, Standards and Regulations - 42 U.S.C. § 6972(a)(1)(A)

Responsible Parties' use, storage, handling and transportation of petroleum products at the sites identified in this Notice violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding storage of petroleum in underground storage tanks.

Between March 1, 2006 and March 1, 2011, Responsible Parties have caused or permitted, cause or permit, or threaten to cause or permit, petroleum contaminants, petroleum constituents and other hazardous waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and now create, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of such petroleum waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

Mishandling of Hazardous Waste - RCRA § 3004; 42 U.S.C. § 6924 *et seq.*

Between March 1, 2006 and March 1, 2011, Responsible Parties used, handled, stored and transported petroleum products at the sites identified in this Notice in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath each of the sites and beneath adjacent properties. Contaminant levels of TPHg, TPHd, benzene, toluene, and MTBE in groundwater at the sites are significantly greater than the allowable MCLs and/or WQOs for said constituents.

River Watch alleges that Responsible Parties have, at all times material, engaged in the following activities or failure to act in violation of waste handling provisions mandated in the RCRA:

1. Failure to adequately maintain records of hazardous wastes which were used, handled, treated, stored or otherwise disposed of on or offsite - 42 U.S.C. §6924(a)(1);
2. Failure to satisfactorily monitor, inspect and report - 42 U.S.C. §6924(a)(2);
3. Failure to adequately use, handle, treat, store or properly dispose of hazardous wastes - 42 U.S.C. §6924(a)(3);
4. Failure to adequately locate, design and construct hazardous waste treatment, storage or disposal facilities -42 U.S.C. §6924(a)(4); and,
5. Failure to properly implement contingency plans for effective action to minimize unanticipated damage from the handling, transportation, treatment, storage or disposal of hazardous waste -42 U.S.C. §6924(a)(5).

Information currently available to River Watch indicates these violations have occurred every day over the past 5 years, or on numerous separate occasions, and that they violations are continuing.

Unpermitted Handling, Treatment, Storage, Transportation and/or Disposal of Hazardous Waste - RCRA § 3005; 42 U.S.C. § 6925 *et. seq.*

River Watch alleges that between March 1, 2006 and March 1, 2011 Responsible Parties have engaged in the following activities in violation of the waste handling provisions mandated under the RCRA:

1. Deposition and maintenance of hazardous wastes which has caused and continues to cause the generation and discharge of hazardous waste to the environment;
2. Installation and maintenance of a system of conveyances to dispose of hazardous wastes generated and released from the sites identified in this Notice;
3. Handling, storage, treatment, transportation, and/or disposal of hazardous or solid waste at the sites identified in this Notice without the appropriate regulatory permit; and,

4. Unpermitted handling, storage, treatment, transportation and/or disposal of hazardous waste is in violation of, 42 U.S.C. § 6925.

Information currently available to River Watch indicates these violations have occurred every day over the past 5 years, or on numerous separate occasions, and that they violations are continuing.

Prohibition Against Open Dumping - RCRA § 4005; 42 U.S.C. § 6945 *et. seq.*

River Watch alleges that between March 1, 2006 and March 1, 2011 Responsible Parties have engaged in the following activities, failures or omissions in violation of the waste handling provisions mandated under the RCRA:

1. Open dumping by way of the discharge of hazardous waste to open ground where it will and has contaminated the soils, groundwater and surface waters as described in this Notice;
2. The sites identified in this Notice do not qualify as landfills under 42 U.S.C. § 6944, nor do they qualify as facilities for the disposal of hazardous waste; and,
3. Responsible Parties have no RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the sites identified in this Notice.

Information currently available to River Watch indicates these violations have occurred every day over the past 5 years, or on numerous separate occasions, and that they violations are continuing.

Violation of UST Regulations - RCRA § 9001; 42 U.S.C. § 6991; 42 U.S.C. §6972 (a)(1)(A)

Provisions of the RCRA govern the use and operation of underground storage tanks used for storage of petroleum products (subchapter IX, 42 U.S.C. § 6991 *et seq.*), as well as above ground tanks used for the same purposes. The RCRA UST regulatory program is adopted and implemented in California under the State Underground Storage of Hazardous Substance Account Act (California Health & Safety Code § 25280 *et seq.*).

Between March 1, 2006 and March 1, 2011, Responsible Parties' use and storage of petroleum at the sites identified in this Notice allowed significant quantities of hazardous petroleum constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California UST regulatory programs including, but not limited

to provisions governing general operating requirements for underground storage tanks, release detection and prevention requirements, release reporting and investigation requirements, and release response and corrective action requirements.

Specifically, River Watch contends Responsible Parties are liable for the following statutory violations:

1. Failure to prevent a release, in violation of 40 CFR §§ 280.30, 280.31 and California Health & Safety Code §§ 25292.1(a) - (c), 25292.3(a) and (b);
2. Failure to properly detect and monitor releases, in violation of 40 CFR §§ 280.40 - 280.44 and California Health & Safety Code § 25292;
3. Failure to properly report and keep records of the release, in violation of 40 CFR §§ 280.34, 280.50, 280.52, 280.53, 280.63(b) and California Health & Safety Code §§ 25289, 25293 and 25295(a)(1); and,
4. Failure to take proper corrective action, in violation of 40 CFR §§ 280.53, 280.60 - 280.66 and California Health & Safety Code § 25295(a)(1).

Information currently available to River Watch indicates these violations have occurred every day over the past 5 years, or on numerous separate occasions, and that they violations are continuing.

Imminent and Substantial Endangerment - RCRA § 7002(a)(1)(B); 42 U.S.C. § 6972 (a)(1)(B)

Between March 1, 2006 and March 1, 2011, Responsible Parties used, handled, transported and/or stored petroleum products at the sites identified in this Notice in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the sites and beneath adjacent properties. The contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater at the sites are significantly greater than the allowable MCLs and/or WQOs for said constituents. Benzene, MTBE, TAME, and TBA are known or suspected carcinogens. Toluene is a reproductive toxin. Ethylbenzene, methanol and xylene are live toxins. All are known to harm both plants and animals. In their concentrations at the sites, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

Information currently available to River Watch indicates these violations have occurred every day over the past 5 years, or on numerous separate occasions, and that they violations are continuing.

The violations alleged in this Notice are knowing and intentional in that Responsible Parties have used, stored and sold petroleum products at the sites which are known to contain hazardous substances, and have intended that such products will be sold to and used by the public. Responsible Parties have known of the contamination at least since the mid-1980's, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the sites, and to continually contaminate and re-contaminate actual and potential sources of drinking water.

Violations of the RCRA of the type alleged in this Notice are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

In addition to the violations set forth above, this Notice is intended to cover all violations of the RCRA by Responsible Parties as evidenced by information which becomes available to River Watch after the date of this Notice.

IDENTITY OF ENTITY BRINGING NOTICE

The entity bringing this Notice of Violations is Northern California River Watch, P.O. Box 817, Sebastopol, CA, 95472, telephone number is (707) 824-4372, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation, organized under the laws of the State of California, and dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. The violations of Responsible Parties as set forth in this Notice affect the economic stability, physical health and aesthetic enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by these violations of the RCRA.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be addressed to:

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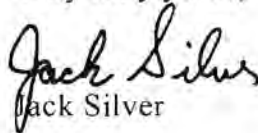
CONCLUSION

The RCRA requires that sixty (60) days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the U.S. Environmental Protection Agency and the State in which the violation is alleged to have occurred (42 U.S.C. § 6972(b)(1)(A)). The RCRA also requires that a private party provide ninety (90) days prior notice to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred before initiating an action for an imminent and substantial endangerment to human health or the environment (42 U.S.C. § 6972(b)(2)(A)).

However, if Subtitle C, Subchapter III, violations are alleged such as in this Notice, actions can be brought without observing the 60/90 day notice waiting periods applicable to § 6972(a)(1)(A) and § 6972(a)(1)(B) claims; and, when Subtitle C, Subchapter III, claims are brought in conjunction with claims under § 6972(a)(1)(A) and § 6972(a)(1)(B), none of the claims require a waiting period before a complaint under provisions of the RCRA may be filed.

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of the RCRA as to the sites identified in this Notice. At the close of the notice periods *or substantially earlier*, River Watch intends to file a suit against Responsible Parties for each of the violations as alleged herein. However, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If you wish to pursue such discussions in the absence of litigation, we would encourage you to initiate such discussions immediately so that we might be on track to resolving the issues raised in this Notice. River Watch will not delay the filing of a lawsuit if discussions have not commenced within a reasonable time following the service of this Notice.

Very truly yours,


Jack Silver

JS:lhbm

cc: Administrator
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